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No. 84-1599 (3)

In The
Supreme Court of the United States
October Term, 1984

BASS AVIATION, INC.,
Petitioner,

vs.

MARGARITA HERNANDEZ, etc., et al.,
Respondents.

On Petition For a Writ of Certiorari to the Fourth District Court of Appeal of Florida

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI BY RESPONDENTS MARGARITA HERNANDEZ, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF RAFAEL HERNANDEZ, JR., DECEASED; MARGARITA HERNANDEZ, INDIVIDUALLY; STANLEY HERNANDEZ; AND AHIZA HERNANDEZ

THOMAS R. TROMPETER
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RESTATED QUESTION PRESENTED FOR REVIEW

Whether the exercise of personal jurisdiction by Florida courts over a nonresident corporate lessor of a Lear Jet which crashed in Haiti during a flight originating in Florida killing two Florida residents, satisfies federal constitutional due process standards for suits against the corporation arising out of the alleged negligent maintenance of the aircraft, negligent failure to warn of its unairworthy condition, and vicarious liability as lessor of a dangerous instrumentality, where the nonresident corporation: (a) had repeatedly leased the same or identical aircraft to the same Florida lessee on prior occasions; (b) leased the particular aircraft involved in this suit to a Florida lessee with the knowledge that it would be flown to Florida; (c) sold, leased and operated aircraft in Florida; (d) allowed Florida businesses to operate leased aircraft under its FAA Part 135 Operating Certificate; (e) and regularly advertised and solicited business in Florida.

TABLE OF CONTENTS

Page

RESTATED QUESTION PRESENTED FOR REVIEW i

SUPPLEMENTAL STATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT 4

REASONS WHY THE WRIT SHOULD BE DENIED:

A. The Florida Court Applied The Proper Legal Jurisdictional Standards To The Facts And Reached A Correct Result. 5

B. Due To The Interlocutory Nature Of The Decision Below And In Light Of Subsequent Proceedings In The Trial Court, No Reason Exists For A Grant Of Certiorari. 8

CONCLUSION 10

TABLE OF AUTHORITIES

	Page
American Construction Co. v. Jacksonville, T. & K. R. Co., 148 U.S. 372 (1893)	8
Brotherhood of Locomotive Firemen & Bangor & Arrostock R. R., 389 U.S. 327 (1967)	8
Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251 (1916)	8
Hanson v. Denckla, 357 U.S. 235 (1958)	5
In-Flight Devices Corporation v. Van Dusen Air. Inc., 466 F.2d 220 (6th Cir. 1972)	6
Keeton v. Hustler Magazine, Inc., 104 S.Ct. 1473 (1984)	7
Land v. Dollar, 330 U.S. 731 (1947)	9
Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682 (1949)	9
Mississippi Interstate Express, Inc. v. Transpo, Inc., 681 F.2d 1003 (5th Cir. 1982)	6
Shaffer v. Heitner, 433 U.S. 286 (1977)	5
World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)	5

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The Respondents, MARGARITA HERNANDEZ, as Personal Representative of the Estate of Rafael Hernandez, Jr., Deceased; MARGARITA HERNANDEZ, Individually; STANLEY HERNANDEZ; and AHIZA HERNANDEZ, (hereafter "HERNANDEZ"), respectfully request that this Court deny the Petition for Writ of Certiorari, which seeks review of the decision of the Fourth District Court of Appeal of the State of Florida in this

cause. That opinion is reported at *Hernandez v. Bass Aviation,* 453 So.2d 447 (Fla. 4th DCA 1984). The dismissal of the Petition for Writ of Certiorari to the Florida Supreme Court from the decision by the Fourth District Court of Appeal for the State of Florida is unreported.

SUPPLEMENTAL STATEMENT OF THE CASE

Respondents, HERNANDEZ, adopt the Brief of Respondent MOYER in this cause. In addition to the facts and matters described in the Petition of BASS AVIATION, INC. and the Brief in Opposition by MOYER, Respondents, HERNANDEZ, set forth the following additional matters.

BASS AVIATION, INC. was engaged in a commercial aircraft charter business conducted under Part 135 of the Federal Aviation Regulations and in the leasing of airplanes to others. BASS AVIATION, INC. conducted charter operations under its 135 Certificate throughout the United States including activities in Florida, Puerto Rico, France, Germany, and Canada. (App. 6)

BASS AVIATION had a long term business relationship with International Jet Charter (a Florida business) and its president, Bill Tougas, a Florida resident. BASS AVIATION, INC. understood that aircraft leased to International Jet Charter and Bill Tougas were to be "located principally in the State of Florida". BASS AVIATION, INC. and Bill Tougas entered into a ten (10) year aircraft lease agreement on September 20, 1979 and on January

13, 1980 they drafted a five (5) year lease agreement. During the period May 23, 1979 through November 15, 1979 BASS AVIATION, INC. charged International Jet Charter over $124,130.00. (App. 8)

BASS AVIATION, INC. also had extensive dealings with Marine Holdings, Ltd., a Florida corporation operating out of Fort Lauderdale, Florida. The chief pilot for BASS AVIATION, INC. was the pilot for Marine Holdings, Ltd., operating out of Fort Lauderdale, Florida. The proposed sale of a Lear Jet to Marine Holdings, Ltd. was negotiated in Florida. Marine Holdings, Ltd., operated a Lear Jet on April 1-2, 1980 for flights originating in Fort Lauderdale and terminating in Fort Lauderdale, Florida for which BASS AVIATION, INC. charged $6,447.28. (App. 8).

Prior to the February 29, 1980 least (App. 3) of Lear Jet N211MB which crashed during the lease period and resulted in this case, BASS AVIATION, INC. had three prior leases of aircraft to the same Florida entities,[1] all of which and were negotiated and effected by Charles Moyer, the pilot and a Florida resident. These leases occurred on June 2, 1979, for a lease of Lear Jet 83JM (App. 1); a lease on October 22, 1979 to Titanic Aircraft Sales and Service, Ltd. of Lear Jet N102PA (App. 1-2) and a lease on October 29, 1979 to Titanic Aircraft Sales and Service, Ltd. of Lear Jet N211MB (App. 2).

Subsequent to the jurisdictional decision below, there have been further proceedings affecting the viability of

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[1] The written "leases" were in the name of Titanic Aircraft Sales and Service, Ltd., and Air Montana (corrected to Air Montez) (a Florida lessee).

this appeal. Co-Plaintiff Moyer, in a separate Federal case, obtained a Final Judgment against defendant, EXECUFLITE, INC., in March of 1982. (App. 26-27). HERNANDEZ also has defaults on liability against EXECUFLITE, INC. On April 4, 1985, the Florida trial court in the instant case granted partial final summary judgment in favor of Moyer against the INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, finding coverage for EXECUFLITE, INC., and coverage for the earlier Federal court judgment. (App. 23-25).

SUMMARY OF ARGUMENT

1. The decision below properly applied the Florida Long Arm Statutes to the jurisdictional question and accurately found that there were sufficient minimum contacts with Florida by BASS AVIATION, INC. so that it could reasonably except to be haled into court in Florida regarding the aircraft accident in question without violating federal due process.

2. The decision below is not sufficiently final to warrant certiorari by this Court. There has been no trial on the merits but only a preliminary jurisdictional ruling. At the trial on the merits, BASS AVIATION, INC., may prevail, or judgment may be entered on an adequate independent state ground, or judgment may be effected against a different defendant; all of which would render the present issue moot.

REASONS WHY THE WRIT SHOULD BE DENIED

A. The Florida Court Applied The Proper Legal Jurisdictional Standards To The Facts And Reached A Correct Result.

The present decision is fully in accord with the decisions that have addressed the question of the minimum jurisdictional contacts necessary to meet federal due process requirements. Petitioner alleges that the decision of the Florida appellate court is in conflict with the decision of this Court in *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).[2] Rather, the Florida court found that the complaint and proof met the jurisdictional test established by this Court:

> "Unquestionably the single most important factor to be considered is whether 'the defendant's conduct and connection with the forum . . . are such that he should reasonably anticipate being haled into court there . . .' *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. at 297, 100 S.Ct. at 567, 62 L.Ed.2d at 501. It is essential that this circumstance be considered from the perspective of the defendant—not from that of the plaintiff. See *Shaffer v. Heitner,* 433 U.S. 186, 201, 97 S. Ct. 2569, 2580, 43 L.Ed.2d 683 (1977). The reasonable foreseeability factor is frequently applied to force a non-resident defendant to answer a suit within the forum if it 'purposefully avails itself of the privilege of conducting activities within the forum . . .' *Hanson v. Denckla,* 357 U.S. 235, 253, 78 S. Ct. 1228, 1240, 2 L.Ed.2d 1283 (1958)."

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[2] Nor is the decision of the Florida District Court of Appeal in conflict with this Court's decision in *Hanson v. Denckla,* 357 U.S. 235, 78 S. Ct. 1228, 2 L.Ed.2d 1283 (1958), since the Petitioner purposely availed itself of the privilege of conducting activity in Florida.

Hernandez v. Bass, 453 So.2d 447, (Fla. 4th DCA 1984). (Pet. App. 2a-3a).

From the totality of the factual record before it, including the 180 page deposition of the President of BASS AVIATION, INC., the Florida court listed several specific contacts with Florida that were particularly relevant to the jurisdictional inquiry. These were: (a) advertising in 1979 and 1980 in Florida pursuant to a written agreement with A/C Flyer, whose office was in Miami; (b) lease agreements with Florida corporations, including a lease agreement with a Florida corporation involving the aircraft in question; (c) correspondence and invoices directed to Fort Lauderdale, Florida, from Petitioner; (d) Petitioner's president was aware that the aircraft would be flown to Florida; and further, (e) the FAA Part 135 Certificate held by Petitioner, was used by Florida entities who were renting or leasing aircraft from BASS.

In addition to the items specified in the opinion below, the record is replete with contacts that Petitioner had with the forum State to justify the exercise of personal jurisdiction over the non-resident defendant. In its Petition, BASS AVIATION admits that it delivered a leased aircraft into Florida. (Pet. App. 5). By entering into leases with Florida residents with the knowledge that the aircraft which were the subjects of the leases would be operated in Florida, and by advertising in Florida, BASS AVIATION purposely availed itself of the privilege of doing business in Florida. See *Mississippi Interstate Express, Inc. v. Transpo, Inc.,* 681 F.2d 1003, 1008 (5th Cir. 1982); *In-Flight Devices Corporation v. Van Dusen Air, Inc.,* 466 F.2d 220 (6th Cir. 1972).

Further, Petitioner's contacts with Florida are connected with the cause of action. The cause of action is based on the crash of Lear Jet N211MB. This Lear Jet was leased by BASS AVIATION to TITANIC AIRCRAFT SALES & SERVICES, LTD., a corporation with its principal place of business in Florida, and Petitioner knew the aircraft would be flown in Florida during the lease. (Pet. App. 4). The death of the Plaintiffs' decedent occurred during a flight which originated in Florida and terminated in the crash.

These repeated and continuous business dealings with at least three different Florida entities, repeated prior dealings with the lessee in question, and the Florida residencies of the decedents and their heirs,[3] along with all the other facts, establish personal jurisdiction both for general jurisdiction and for specific jurisdiction over Petitioner.

The record, including the briefs before the Florida appellate court, establish that BASS AVIATION, INC. made hundreds of thousands of dollars as a result of its leases of aircraft to Florida entities and the operation of aircraft in and out of Florida airports. Under the circumstances of this case, it cannot be said that the exercise of personal jurisdiction over BASS AVIATION, INC., by the Florida courts offends traditional notions of fair play and substantial justice. This is the result reached by the

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[3] The plaintiffs' residence plays an important role, along with relations among the defendant, the forum, and the litigation in determining the propriety of State court jurisdiction. *Keeton v. Hustler Magazine, Inc.*, 104 S. Ct. 1473 (1984).

Florida appellate court applying established and accepted Federal and Florida due process standards.

B. Due To The Interlocutory Nature Of The Decision Below And In Light Of Subsequent Proceedings In The Trial Court, No Reason Exists For A Grant Of Certiorari.

The decision below was the reversal of the trial Court's dismissal with a remand to proceed to trial on the merits. The only issue considered by the appellate court was whether there were sufficient minimum contacts by BASS AVITION, INC. to subject it to personal jurisdiction by the Florida court. Had the trial court denied the motion to dismiss, there could be no appeal of that denial until the conclusion of the case on the merits. The same rationale is applicable to the decision by the Florida Fourth District Court of Appeal. Since it merely reinstates personal jurisdiction at the trial level, and therefore operates in effect as a denial of the motion to dismiss, there should be no further appeal pending a final outcome of the litigation on the merits.

Non final judgments remanding the case to the trial court for additional proceedings such as the present case are not a proper subject matter for certiorari absent exceptional reasons. *American Construction Co. v. Jacksonville, T. & K. R. Co.*, 149 U.S. 372. The lack of finality is a sufficient ground for the denial of certiorari. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, *Brotherhood of Locomotive Firemen & Bangor & Arrostock R. R.*, 389 U.S. 327. This case does not present any important, novel, or clear cut legal issue important to state court jurisdiction. Rather, it concerns the routine

application of well recognized rules to a particular set of facts.[4]

In the instant case, it may never be necessary to reach the jurisdictional issue concerning BASS AVIATION, INC. Since the initial appeal of the jurisdiction over BASS AVIATION, INC., the Florida courts have made determinative rulings concerning liability of a codefendant, EXECUFLITE, INC., and insurance coverage for that defendant by the INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA. Based upon a prior Federal court final judgment against EXECUFLITE, INC. (App. 23-25), the Florida trial court has entered a partial final summary judgment against the INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA in the amount of the judgment against EXECUFLITE, INC. (App. 26-27). Therefore, recovery against this codefendant and payment of the damages will dispose of the entire case. As HERNANDEZ has identical claims in the same case against EXECUFLITE, INC. and the INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, and has a default on liability against EXECUFLITE, INC., there is every likelihood that the HERNANDEZ claims may be resolved against EXECUFLITE, INC., and the INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA without proceeding further against Petitioner, BASS AVIATION, INC.

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[4] This case is distinguishable from *Land v. Dollar*, 330 U.S. 731, and *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682. Those cases raised important, clear cut, jurisdictional questions appropriate for resolution prior to a trial on the merits.

CONCLUSION

Respondents respectfully submit that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

THOMAS R. TROMPETER
Counsel for Respondents,
MARGARITA HERNANDEZ, as Personal Representative of the Estate of Rafael Hernandez, Jr., Deceased; MARGARITA HERNANDEZ, Individually; STANLEY HERNANDEZ; and AHIZA HERNANDEZ
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INDEX TO APPENDIX

Aircraft Lease by Bass Aviation dated June 2, 1979 Exhibit #14 to Deposition of Philip Bass ..... App. 1

Aircraft Lease by Bass Aviation dated October 22, 1979 Exhibit #9 to Deposition of Philip Bass ..... App. 1

Aircraft Lease by Bass Aviation dated October 29, 1979 Exhibit #12 to Deposition of Philip Bass ..... App. 2

Aircraft Lease by Bass Aviation dated February 29, 1980 Exhibit #13 to Deposition of Philip Bass ..... App. 3

Brief of Appellants, Hernandez, to the Fourth District Court of Appeal of Florida dated June 20, 1983 ..... App. 4

Reply Brief of Appellants, Hernandez, to the Fourth District Court of Appeal of Florida dated December 22, 1983 ..... App. 14

Partial Summary Judgment by the Circuit Court of the 17th Judicial Circuit for Broward County, Florida, dated April 4, 1985 ..... App. 23

Final Judgment by the United States District Court in the Southern District of Florida dated March 27, 1982 ..... App. 26

APPENDIX

Bass Aviation agrees to lease Learjet 25B (83JM) to Air Montez or Chuck Moyer for the period June 3rd (third) through June 10th (tenth). The rate will be $500 per hour (dry rate) with a minimum utilization of 25 (twenty-five) hours. Deposit of $8,500 was received by Milt Hobbs on June 2nd (second). The balance of $4,000 will be wire transferred to the Bass Aviation account on June 5th.

The aircraft is to be returned to Fairhope, Alabama in same condition as received on June 2nd by Lessee.

The aircraft is to be flown only by Mr. Chuck Moyer and Mr. Louis Ferriero.

Any damage to A/C lessee agrees to make A/C payments during repair not to exceed $25,000 per month. (A/C value 1.3 million.)

Signed,

/s/ Charlie Moyer
/s/ Milton Hobbs

October 22, 1979

Lease Agreement entered into this date between Bass Aviation and *Titanic Aircraft Sales & Service, LTD* a one week 7 day lease on Lear Jet N102PA Serial 224. It is agreed that the advance sum of $10,000.00 will be paid up front based on a guaranteed 20 hour usage at $500.00 per hour. Any hours in excess of 20 hours will be at the standard rate of $500.00 per hour. Bass Aviation will provide insurance and *Titanic Aircraft Sales & Service LTD* will provide fuel, crew and maintenance for the duration of the lease. Should the aircraft be damaged to the

point it has to be taken out of service for repair, then *Titanic Aircraft Sales and Service, LTD* agrees to make monthly payments to the bank until the aircraft is returned from repair and into service. This sum should not exceed $17,280.00 per month.

/s/ Charles Moyer /s/ Phillip W. Bass
President

Attested to by /s/ Ralph Hernandez, Jr.
upon delivery of aircraft

October 29, 1979

Lease Agreement entered into this date between Bass Aviation and Titanic Aircraft Sales, a two week lease on Sn59 N 211 MB. It is agreed that the advance sum of ———— will be paid up front based on a guaranted 33 hour usage at $500.00 per hour. Any hours in excess of 33 hours will be at the standard rate of $500.00 per hour. Bass Aviation will provide insurance and *Titanic Aircraft Sales* will provide fuel, crew and maintenance for the duration of the lease. Should the aircraft be damaged to the point it has to be taken out of service for repair, then *Titanic Aircraft Sales* agrees to make monthly payments to the bank until the aircraft is returned from repair and into service. This sum should not exceed $26,000 per month.

/s/ Charles Moyer /s/ Phillip W. Bass
President

February 29, 1980

Lease Agreement entered into this date between Bass Aviation, Fairhope, Alabama, and *Titanic Aircraft Sales & Service, LTD* a one week 7 day lease on Lear Jet N211MB Serial 059. It is agreed that the advance sum of $10,000 will be paid up front based on a guaranteed 20 hour usage at $500.00 per hour. Any hours in excess of 20 hours will be at the standard rate of $500.00 per hour. Bass Aviation will provide insurance and *Titanic Aircraft Sales & Service LTD* will provide fuel, crew and maintenance for the duration of the lease. Should the aircraft be damaged to the point it has to be taken out of service for repair, then *Titanic Aircraft Sales and Service, LTD* agrees to make monthly payments to the bank until the aircraft is returned from repair and into service. This sum should not exceed $26,000 per month. This lease shall be governed under the laws of the State of Alabama.

/s/ Charles Moyer

/s/ Phillip W. Bass
President

Attested to by .....
upon delivery of aircraft

DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA

CASE NO: 83-366

MARGARITA HERNANDEZ, as personal representative of the estate of Rafael Hernandez, Jr., deceased; MARGARITA HERNANDEZ, individually; STANLEY HERNANDEZ; AHIZA HERNANDEZ; GATES LEARJET CORPORATION, a foreign corporation; and LINDA MOYER, as personal representative of the Estate of Glenn Charles Moyer, deceased,

Appellants,

vs.

BASS AVIATION, INC., a foreign corporation; TITANIC AIRCRAFT SALES CORPORATION, a foreign corporation; TITANIC AIRCRAFT SALES AND SERVICE, LTD., a foreign corporation; and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a foreign corporation,

Appellees.

BRIEF OF APPELLANTS, MARGARITA HERNANDEZ, STANLEY HERNANDEZ and AHIZA HERNANDEZ

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TABLE OF CONTENTS AND AUTHORITIES

CONTENTS

PAGE

Statement of the Case 1

Statement of the Facts 2

Point on Appeal

THE TRIAL COURT ERRED IN DISMISSING DEFENDANTS, BASS AVIATION, INC., FOR LACK OF PERSONAL JURISDICTION. 3

Argument 3, 10

Conclusion 11

Certificate of Service 12

AUTHORITIES

Buckingham v. Atlas Aircraft Corp., 343 So.2d 654 (Fla. 4th DCA 1977) 9

Ford Motor Company v. Atwood Vacuum Machine Company, 392 So.2d 1305 (Fla. 1981) 9

Shoei Safety Helmet Corp v. Conlee, 409 So.2d 39 (Fla. 4th DCA 1982) 10

Florida Statutes § 48.181 and § 48.193

STATEMENT OF THE CASE

Appellant adopts the statement of the case submitted by co-appellants, GATES LEARJET and LINDA MOYER.

STATEMENT OF THE FACTS

Appellants adopt the statement of the facts submitted by co-appellants, GATES LEARJET and LINDA MOYER; and add only those additional items set forth in the text of brief and the appendix.

THE TRIAL COURT ERRED IN DISMISSING DEFENDANTS, BASS AVIATION, INC., FOR LACK OF PERSONAL JURISDICTION.

Appellants adopt the arguments raised by co-appellants, GATES LEARJET and LINDA MOYER, in their briefs, and in addition present the following:

BASS AVIATION, INC., was engaged in a commercial aircraft charter business conducted under Part 135 of the Federal Aviation Regulations (R. 178-179). Also, BASS AVIATION, INC., leased airplanes to others. Part 135 operations requires the issuance of a certificate by the Federal Government to the operator in order to legally operate aircraft for hire. BASS AVIATION, INC., itself conducted charter operations under its 135 Certificate throughout the United States including activities in Florida; (R. 176-181) plus Puerto Rico, France, Germany, and Canada. (R. 320 & 230).

In addition to charter flights conducted by its own pilots under its Part 135 Certificate, BASS AVIATION, INC., allowed other entities to use *its* 135 Certificate

along with renting/leasing aircraft to them. This included International Jet Charter and Mr. Bill Tougas, as well as Marine Holdings, LTD., and Mr. Sheldon Mintzberg. (R. 194 & 178). It is unclear whether Charles Moyer and TITANIC AIRCRAFT SALES AND SERVICE LTD., were ever authorized to operate under BASS AVIATION, INC.'s 135 Certificate. The use of BASS AVIATION, INC.'s Part 135 Certificate by International Jet Charter and Marine Holdings was essential to these operations since they could have not been legally conducted otherwise. Therefore, the use of BASS AVIATION, INC.'s Part 135 Certificate for the activities of Marine Holdings, LTD., and International Jet Charter constituted a joint venture by these entities, and constituted BASS AVIATION, INC., doing business in the State of Florida. BASS AVIATION, INC., by allowing others to operate under its Part 135 Certificate necessarily became also engaged in and responsible for those business activities; since otherwise the requirements for a valid FAA certificate for such operations would be meaningless.

Independently, the business dealings between BASS AVIATION, INC., and Marine Holdings, LTD., International Jet Charter, Bill Tougas, TITANIC AIRCRAFT SALES AND SERVICE, LTD., and Chuck Moyer, all of which were Florida businesses, constituted doing business in Florida by BASS AVIATION, INC.

International Jet Charter was a Florida business and Bill Tougas a Florida resident, and the business was centered in Fort Lauderdale, Florida. This business relationship was on a long term basis. (R. 177-178). With respect to aircraft leased to International Jet Charter

and Bill Tougas, BASS AVIATION, INC., understood that the aircraft were to be "located principally in the State of Florida". (R. 309). BASS AVIATION, INC., and Bill Tougas entered into a ten (10) year aircraft lease agreement on September 20, 1979 (R. 395 & 410), and in January 13, 1980 International Jet Charter and William Tougas, individually drafted a five (5) year lease agreement. (R. 738-800 and Appendix A). Appendix B contains copies of the various invoices and correspondence relating to the business relationship between International Jet Charter and BASS AVIATION, INC. The ledger sheet covering the period May 23, 1979 through November 15, 1979 indicates that in that approximate six month period BASS AVIATION, INC., charged International Jet Charter over One Hundred Twenty Four Thousand One Hundred Thirty ($124,130.00) Dollars.

Marine Holdings, LTD., was a Florida corporation operating out of Fort Lauderdale International Airport. The chief pilot for BASS AVIATION, INC., was the pilot for Marine Holdings, LTD., operating out of Fort Lauderdale. (R. 178-179). Phillip Bass visited Sheldon Mintzberg in Florida to negotiate the proposed sale of a Learjet to Marine Holdings, LTD. (R. 244). Moreover, the invoice number 144 to Marine Holdings, LTD., indicates that a Learjet was operated on April 1 and 2, 1980 for flights originating in Fort Lauderdale and terminating in Fort Lauderdale, Florida for a total charge of Six Thousand Four Hundred Forty Seven Dollars and Twenty Eight ($6,447.28) Cents. (3R. 411).

In addition to the Florida entities of International Jet Charter and Marine Holdings, LTD., BASS AVIATION, INC., had repeated prior business dealings with

Charles Moyer and TITANIC AIRCRAFT SALES AND SERVICE, LTD. The first documented contact was on June 2, 1979. BASS AVIATION, INC., leased a Learjet to Chuck Moyer and Air Montana (corrected to Air Montez). It appears that this aircraft was delivered to Florida by Milt Hobbs, an employee of BASS AVIATION, INC. (R. 233, 459 & 460). The aircraft on this occasion was to be flown by Charles Moyer and also by Mr. Luis Ferriero, who is also known to be a resident of Fort Lauderdale, Florida. (R. 234). On October 22, 1979 BASS AVIATION, INC., leased a Learjet to Charles Moyer and TITANIC AIRCRAFT SALES AND SERVICE, LTD., for one week at a minimum charge of $10,000.00. TITANIC AIRCRAFT SALES AND SERVICE, LTD., was known to be operating out of the State of Florida. (R. 288, 289, 291, & 293). On October 29, 1979 BASS AVIATION, INC., again leased a Learjet to TITANIC AIRCRAFT SALES AND SERVICE, LTD., this time with a minimum guarantee of $16,500.00. Phillip Bass received two payments of Fifteen Thousand ($15,000.00) Dollars each, on October 31, 1983 and November 1, 1983 on behalf of TITANIC AIRCRAFT SALES AND SERVICE, LTD. All leases to TITANIC AIRCRAFT SALES AND SERVICE, LTD., were through Charles Moyer and by telephone, apparently to and from Florida. (R. 238-239). Upon completion of the leases, BASS AVIATION, INC., would provide an invoice to Charles Moyer to take back to Florida for subsequent payment. (R. 238). On February 29, 1980 BASS AVIATION, INC., again leased Learjet N211MB to TITANIC AIRCRAFT SALES AND SERVICE, LTD., and the person of Charles Moyer for a guaranteed $10,000.00 minimum charge. (R.

458). At the time of negotiating this lease Phillip Bass and Chuck Moyer discussed entering into a long term lease and a proposed written lease was given to Charles Moyer for review and with a view toward entering into a long term agreement. (R. 505, 519, 207, 299 & 300). BASS AVIATION, INC., leased Learjet N211MB *solely* to TITANIC AIRCRAFT SALES AND SERVICE, LTD., and Charles Moyer. (R. 215).

At the time Charles Moyer and Rafael Hernandez, Jr., received N211MB on February 29, 1980 to start the lease period which ended in the crash, Charles Moyer told Phillip Bass that the aircraft would be going back down to Florida. (R. 293). At that time Phillip Bass considered Florida a dangerous area for airplanes due to the high theft rate (R. 291); and in fact one of BASS AVIATION, INC.'s airplanes, while on charter, had been stolen in Florida. (R. 142). Therefore, BASS AVIATION, INC., at the time that N211MB was turned over to Charles Moyer on February 29, 1980 knew and expected that the aircraft would be operated in Florida during at least part of the lease period.

From June 1979 through the date of the accident BASS AVIATION, INC., repeatedly dealt with Charles Moyer and TITANIC AIRCRAFT SALES AND SERVICE, LTD., involving substantial sums of money for the lease of aircraft including N211MB. This was with the knowledge that Charles Moyer was a Florida resident, that TITANIC AIRCRAFT SALES AND SERVICE, LTD., had its principal place of business in Fort Lauderdale, Florida, and that the aircraft itself would be operated in Florida. Arrangements for these leases were made by various telephone calls between BASS AVIATION,

INC., and Chuck Moyer in Florida. Additionally, invoices were returned to Florida for payment of any balances due on the lease by TITANIC AIRCRAFT SALES AND SERVICE, LTD.

On March 3, 1980, N211MB, with Charles Moyer as pilot-in-command, departed Miami International Airport for Port-Au-Prince, Haiti. While on the landing approach to Port-Au-Prince, Haiti the aircraft crashed killing all persons aboard. (R. 4, 738-800/telegram of 3/4/80 also attached as Appendix C).

Florida Statutes § 48.181 and § 48.193 provide for personal jurisdiction over non-residents who operate, conduct, engage in or carry on a business or business venture in the state. The activities of BASS AVIATION, INC., meet the requirements of both statutes. By virtue of having allowed at least Marine Holdings, LTD. and International Jet Charter, and probably TITANIC AIRCRAFT SALES AND SERVICE, LTD., as well, to use its Part 135 Certificate BASS AVIATION, INC., was jointly engaged in business in Florida with these other entities. Alternatively, the repeated and continual business dealings involving the leasing of aircraft with International Jet Charter, Marine Holdings, LTD., TITANIC AIRCRAFT SALES AND SERVICE, LTD., and Charles Moyer, with the knowledge that the aircraft would be operated in Florida plus the advertising over a three (3) year period in Florida, along with the other contacts, constituted sufficient contacts of the same type to provide the Florida court jurisdiction for the crash of March 3, 1980. *Ford Motor Company v. Atwood Vacuum Machine Company*, 392 So.2d 1305 (Fla. 1981); and *Bucking-*

ham v. Atlas Aircraft Corp., 343 So.2d 654 (Fla. 4th DCA 1977).

For the lease which originated on February 29, 1980 and ended with the crash in question, BASS AVIATION, INC., knew that the aircraft would be "going back down to Florida" (R. 193) during the term of the lease. The flight which terminated in the crash originated from Miami International Airport. It can hardly be disputed that that leasing of N211MB for the period encompassing the fatal crash was the exact same type of activity for which BASS AVIATION, INC., was in business and was the same type of lease that had previously existed between BASS AVIATION, INC., and TITANIC AIRCRAFT SALES AND SERVICE, LTD., as well as International Jet Charter and Marine Holdings, LTD. *Shoei Safety Helmet Corp. v. Conlee,* 409 So.2d 39 (Fla. 4th DCA 1982).

Thus, BASS AVIATION, INC's activities involving Florida and involving the lease which terminted in the crash in question meet both the minimum contacts/doing business requirements of the Long Arm Statutes and the connexity requirements so as to confer jurisdiction on the Florida courts over the person of BASS AVIATION, INC. The trial court's finding of insufficient minimum contacts was error and should be reversed.

CONCLUSION

The trial court's order dismissing the complaint against BASS AVIATION, INC., should be reversed and this cause remanded with instructions to permit the action to proceed on the merits against BASS. Alternatively,

the trial court's order should be reversed and this cause remanded with instructions to permit further discovery on jurisdictional issues.

Respectfully submitted,

CASUSO & TROMPETER,
Attorneys for Appellants,
MARGARITA HERNANDEZ,
STANLEY HERNANDEZ, and
AHIZA HERNANDEZ

By: /s/ Thomas R. Trompeter

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to: Michael K. McLemore, Esq., Suite 900, Brickell Centre, 799 Brickell Plaza, Miami, Florida 33131; Edward R. Curtis, Esq., 3104 South Andrews Avenue, Fort Lauderdale, Florida 33316; Roger G. Welcher, Esq., 25 West Flagler Street, Miami, Florida 33130; John R. W. Parsons, Esq., Suite 628 Ingraham Building, 25 S.E. 2d Avenue, Miami, Florida 33131; and Ralph Richard, Esq., Suite 210, Ingraham Building, 25 S.E. 2d Avenue, Miami, Florida 33131; this 20th day of June, 1983.

CASUSO & TROMPETER,
Attorneys for Appellants,
MARGARITA HERNANDEZ,
STANLEY HERNANDEZ, and
AHIZA HERNANDEZ

By: /s/ Thomas R. Trompeter

IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT
STATE OF FLORIDA

CASE NO: 83-366

MARGARITA HERNANDEZ, as personal representative of the estate of Rafael Hernandez, Jr., deceased; MARGARITA HERNANDEZ, individually; STANLEY HERNANDEZ; AHIZA HERNANDEZ; GATES LEARJET CORP., a foreign corporation; and LINDA MOYER, as personal representative of the estate of Glenn Charles Moyer, deceased,

Appellants,

vs.

BASS AVIATION, INC., a foreign corporation; TITANIC AIRCRAFT SALES AND SERVICE, LTD., a foreign corporation; and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a foreign corporation,

Appellees.

REPLY BRIEF OF APPELLANTS, MARGARITA HERNANDEZ, STANLEY HERNANDEZ, AND AHIZA HERNANDEZ

THOMAS R. TROMPETER, ESQ.
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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ..... (i)

POINT ON APPEAL

THE TRIAL COURT ERRED IN DISMISSING DEFENDANT, BASS AVIATION, INC., FOR LACK OF PERSONAL JURISDICTION 1-6

CONCLUSION 7

CERTIFICATE OF SERVICE 8

TABLE OF AUTHORITIES

PAGE

Elmex Corporation v. Atlantic Federal Savings and Loan Association of Fort Lauderdale, 325 So.2d 58 (Fla. 4th DCA 1976) 6

Ford Motor Company v. Atwood Vacuum Machine Company, 392 So.2d 1305, 1310 (Fla. 1981) 2, 4

Kravitz v. Gerbrueder Pletscher Druckgusswaremfabrik d/b/a Pletscher, — So.2d —, 8 FLW 2594 (Fla. 3d DCA, October 25, 1983) 5

Shoei Safety Helmet Corporation v. Conlee, 409 So.2d 39 (Fla. 4th DCA 1982) 5

World-Wide Volkswagen v. Woodson, 444 O.S. 286, 297, 100 S.Ct. 559, 567 4

Zirin v. Charles Pfizer and Company, 128 So.2d 594, 599 (Fla. 1961) 5

Section 48.191, Fla. Stat. 4

Section 48.181, Fla. Stat. 4

THE TRIAL COURT ERRED IN DISMISSING DEFENDANT, BASS AVIATION, INC., FOR LACK OF PERSONAL JURISDICTION.

Appellees assert that BASS AVIATION, INC., did not purposefully avail itself of the privilege of conducting activities within Florida and that its admitted contacts with Florida were "very minimal". (Appellees brief pg. 6). Appellees further assert that "it cannot be seriously contended that these activities have any connection to the cause of action in this lawsuit". (Appellees brief pg. 6). This view of BASS AVIATION's relationship to and activities in Florida simply does not comport with the available facts. The facts establish the following connections with Florida and BASS AVIATION's aeronautical business activities:

1. BASS AVIATION was in the business of leasing aircraft, including lear jets, to others. These activities were not limited geographically and BASS AVIATION advertised in the AC Flyer which was distributed throughout the United states including the State of Florida. Further, their advertisements were placed in Florida and paid for in Florida.

2. The type of aircraft leased by BASS AVIATION, and particularly jet aircraft, were obviously not leased with the idea that they would be used solely within either the State of Alabama (BASS AVIATION's principal place of business) or the State of Mississippi (BASS AVIATION's State of incorporation). These aircraft were known by BASS AVIA-

TION to travel transcontinentally and inter-continentally on almost every lease.[1]

3. BASS AVIATION, INC., allowed two Florida businesses to utilize its Part 135 Federal Aviation Administration Certificate. These entities were International Jet Charter/Bill Tougas, and Marine Holdings, Ltd./Sheldon Mintzberg. Without the use of BASS AVIATION's certificate, these entities could not have conducted their aviation activities in Florida and elsewhere.

4. BASS AVIATION entered into a five year lease (1980 to 1985) with William Tougas. The lease provided for delivery at Fort Lauderdale, Florida and Mr. Tougas was known to be operating his company, International Jet Charter, out of Fort Lauderdale, Florida.

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[1] Although addressing a manufacturer, the Florida Supreme Court's analysis is equally applicable to aviation activities which necessarily involve interstate activities. *Ford Motor Company v. Atwood Vacuum Machine Company*, 392 So.2d 1305 (1981):

> "If a manufacturer is responding to the opportunities created by the existence of an interstate or nationwide market, then the reasonableness of requiring it to defend an action, arising out of its business activity, in another state, is a question not entirely divorced from the substantive question of the manufacturer's liability for the consequences of defects. The manufacturer is the person in the best position to insure against such consequences, and it is less burdensome to require the manufacturer to defend in the state of the injured consumer's residence than to require the plaintiff to travel to the state of the manufacturer's domicile." At page 1312.

5. BASS AVIATION had numeous one time leases with Marine Holdings, Ltd., and International Jet Charter/ Bill Tougas, for the lease of aircraft from which BASS AVIATION gained hundreds of thousands of dollars. Both these companies were known by BASS AVIATION to have their principal operations in South Florida and that the aircraft would be operated in and out of Florida airports.

6. BASS AVIATION completed at least three leases with Charles Moyer/TITANTIC AIRCRAFT SALES AND SERVICE, LTD. and Air Montez (a predecessor of TITANIC) before the lease period when the crash in question occurred. Charles Moyer and these entities were known to be operating out of Fort Lauderdale, Florida. The aircraft on one occasion was delivered to Florida by BASS AVIATION, and BASS AVIATION received payment of substantial amounts of money for these leases.

7. The lease for the crash in question began on March 29, 1980 and was for an initial 5 day period. The aircraft was taken to Denver, Colorado; Vancouver, British Columbia; and back to Florida. It remained over night at Miami International Airport and then departed on March 3, 1980 for Port-au-Prince, Haiti. The passenger, Mr. Mowerman, had boarded the aircraft at Miami International Airport at the start of the first flight. Both the pilot and the co-pilot were residents of Florida.

The facts established that BASS AVIATION had deliberate, continuous, and systematic business dealings in the State of Florida involving the lease of aircraft. As the Supreme Court in *World-Wide Volkswagen v. Wood-*

son, 444 U.S. 286, 297, 100 S.Ct. 559, 567, addressed the *quid pro quo* for doing business in a state:

> "When a corporation "purposefully avails itself of the privilege of conducting activities within the forum state," . . . it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the state."

The activities by BASS AVIATION in Florida and with her citizens meet the requirements of operating, conducting, engaging in, or carrying on a business venture in the State of Florida under both Section 48.191, Fla. Stat. and Section 48.181, Fla. Stat. As the Florida Supreme Court stated in *Ford Motor Company v. Atwood Vacuum Machine Company,* 392 So.2d 1305, 1310 (Fla. 1981):

> "The inquiry into whether there are "minimum contacts" between the forum state and a nonresident business enterprise must look at the nature of the defendant's activities in the state. Continuous and systematic activities provide a reasonable basis for the assertion of jurisdiction."

BASS AVIATION knew that the aircraft it leased would be used throughout the United States as well as internationally as this was the very nature of its business. Certainly BASS AVIATION must have reasonably recognized that it would be potentially subject to jurisdiction in all the areas where its aircraft were operated. As the court in *Zirin v. Charles Pfizer and Company,* 128 So.2d 594, 599 (Fla. 1961):

> "In these days of jet airplanes and modern communications, it cannot be logically argued that the trial . . . away from home or principal place of business

> of the corporation imposes any undue hardship upon it. The courts of this state are always open to the use of such corporations to enforce obligations owed it by Florida citizens. There is no reason why . . . the courts of this state should not be available to its own citizens to enforce the obligations of the foreign corporation."

The main thrust of appellees argument seems to be that since the crash occurred in Haiti, rather than in Florida, there is no jurisdiction in Florida. (Appellees brief pg. 7). This is apparently a connexity argument. However, connexity is not so narrow a concept. Rather, it is a question of whether BASS AVIATION was doing the same type of business in Florida as the activity that gave rise to the wrongful death of the plaintiff. See *Kravitz v. Gebrueder Pletscher Druckgusswaremfabrik d/b/a Pletscher,* — So.2d —, 8 FLW 2594 (Fla. 3d DCA, October 25, 1983). The *Kravitz* decision adopted the rationale of *Shoei Safety Helmet Corporation v. Conlee,* 409 So.2d 39 (Fla. 4th DCA 1982), and held that where the defendant's activities in Florida were such that it was engaged in the same business in Florida as the business out of which the injuries arose, there is personal jurisdiction. There is no requirement that the personal injury occur in Florida. Here, the same aircraft leasing business that BASS AVIATION was engaged in throughout the United States, and with two other Florida entities, and on at least three prior occasions with TITANIC AIRCRAFT in Florida, is the *exact* same type of activity that was resulted in the lease of Lear Jet N211MB that was in effect at the time of the crash. The specific connections between the lease beginning February 29, 1980 and ending with the crash on March 3, 1980 to Florida are that

the flight originated from Miami International Airport, the pilot and co-pilot were Florida residents domiciled in Florida, the passenger was from Dade County, Florida, and the arrangements for the lease were made by TITANIC AIRCRAFT and Charles Moyer who were known and did in fact operate out of Ft. Lauderdale, Florida. In this instance, clearly Florida has a sufficient interest in its citizens and aviation activities conducted within its borders to assert jurisdiction over BASS AVIATION.

Additionally, the tial court dismissed the case without leave to develop further jurisdictional evidence. As can be seen from the supplemental pleadings filed by the parties, there has been significant additional discovery which has adduced many other contacts with Florida that go to the jurisdictional issue. Where, as here, the record is obviously incomplete, the dismissal should have been with leave to present additional facts on the issue of jurisdiction. See *Elmex Corporation v. Atlantic Federal Savings and Loan Association of Fort Lauderdale,* 325 So.2d 58 (Fla. 4th DCA 1976).

CONCLUSION

The trial court's order dismissing the complaint against BASS AVIATION, INC., should be reversed and this cause remanded with instructions to permit the action to proceed on the merits against BASS. Alternatively, the trial court's order should be reversed and this cause

remanded with instructions to permit further discovery on jurisdictional issues.

CASUSO & TROMPETER,
Attorneys for Appellants,
STANLEY HERANDEZ, and
MARGARITA HERNANDEZ,
AHIZA HERNANDEZ,

By: /s/ Thomas R. Trompeter

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing Reply Brief of Appellants, was mailed this 22nd day of December, 1983, to: Roger Welcher, Esq., GOODWIN, RYSKAMP, et al., 4th Floor, City National Bank Building, 25 West Flagler Street, Miami, Florida 33130; John R. W. Parsons, Esq., PETERS, PICKLE, FLYNN, ETC., 628 Ingraham Building, 25 S.E. 2nd Avenue, Miami, Florida 33131; Ralph P. Richard, Esq., THORNTON, DAVID & MURRAY, 210 Ingraham Building, 25 S.E. 2nd Avenue, Miami, Florida 33131; Edward R. Curtis, Esq., FERTIG & CURTIS, P.A., 3104 South Andrews Avenue, Fort Lauderdale, Florida 33316; and Michael K. McLemore, Esq., Suite 900, 799 Brickell Plaza, Miami, Florida 33131.

CASUSO & TROMPETER,
Attorneys for Appellants,
MARGARITA HERNANDEZ,
STANLEY HERNANDEZ, and
AHIZA HERNANDEZ,

By: /s/ Thomas R. Trompeter

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. 81-18129 DF
82-13317 DF

LINDA MOYER, et al.,
Plaintiffs,

-vs-

GATES LEARJET CORPORATION, et al.,
Defendants.

MARGARITA HERNANDEZ, et al.,
Plaintiffs,

-vs-

LINDA MOYER, et al.,
Defendants.

PARTIAL FINAL SUMMARY JUDGMENT

THIS CAUSE came before the Court on Monday, April 1, 1985, on motion by Plaintiff/Crossclaimant, LINDA MOYER, as Personal Representative of the Estate of Glenn Charles Moyer, deceased, (MOYER), for partial summary judgment against Defendant, INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, (ICSP), and having heard argument of counsel, having reviewed the file and discovery, and being fully advised in the premises, it is hereby,

ADJUDGED:

1. That there is no genuine issue of material fact and that MOYER is entitled as a matter of law to recover

against ICSP on Count XII of MOYER'S Amended Complaint, MOYER's count seeking satisfaction of an outstanding judgment against Execuflight, Inc., by ICSP.

2. The Court hereby also grants judgment in favor of MOYER and against ICSP on the Crossclaim of MOYER in Case No. 82-13317 DF, insofar as said Crossclaim seeks satisfaction of judgment against ICSP as set forth in paragraph 1, *supra*.

3. That LINDA MOYER, as Personal Representative of the Estate of Glenn Charles Moyer, deceased, 8651 N.W. 45th Street, Lauderhill, Florida, shall have and recover against INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA One Million One Hundred and Ninety-four Thousand, Six Hundred and Eighteen and Sixty/100 dollars ($1,194,618.60) with interest thereon at the rate of 12% from March 27, 1982, or the total sum of One Million Six Hundred and Twenty-eight Thousand and Two Hundred and Fourteen and Sixty/100 dollars ($1,628,-214.60), which sum shall bear interest at twelve percent per annum (12%) until satisfied, for which sum let execution issue.

4. Jurisdiction to tax costs as to MOYER's claim for coverage is hereby specifically reserved for later consideration by the Court.

5. Since damages claimed in Counts XIII and XIV are the same as contained in Count XII, Counts XIII and XIV are rendered moot by this order accordingly, Final Judgment is hereby entered.

DONE this 4 day of April, 1985, in Chambers at Fort Lauderdale, Broward County, Florida.

M. Daniel Futch, Jr.
CIRCUIT COURT JUDGE

Copies Furnished:
All counsel of record listed on the attached mailing list.

A TRUE COPY

IN THE UNITED STATES DISTRICT COURT
IN THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 81-6028-CIV-ALH

LINDA MOYER, etc., et al.,

Plaintiffs,

-vs-

BASS AVIATION, INC., etc., et al.,

Defendants.

FINAL JUDGMENT

This action came on for trial before the Court, Honorable C. William Kraft, Jr., Senior District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered on March 16, 1982, a copy of such decision is incorporated herein by reference.

Accordingly, it is hereby,

ORDERED AND ADJUDGED that final judgment be entered in favor of the Plaintiff, LINDA MOYER, as Personal Representative of the Estate of Glenn Charles Moyer, Deceased, and against the Defendant, EXECUFLIGHT, INC., in the amount of One million one hundred ninety-four thousand six hundred eighteen dollars and sixty cents ($1,194,618.60), with interest thereon at the rate of twelve percent (12%) as provided by law, for all of which sum let execution issue,

DONE AND ORDERED this 27th day of March, 1982, in Miami, Dade County, Florida.

Approved:

/s/ William Kraft, Jr.
Senior United States District Judge

Clerk of the United States District Court, Southern District of Florida

Copies Furinshed:
Edward R. Curtis, Esquire
Cecyl L. Pickle, Esquire